UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF ADMINISTRATIVE LAW JUDGES

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The Secretary, United States Department of Housing and Urban Development, on behalf of)))
,)
Charging Party,)) FHEO No. 02-13-0112-8
v.)
East River Housing Corporation,)
Respondent.))

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about December 11, 2012, ("Complainant") filed a verified complaint with the United States Department of Housing and Urban Development ("HUD"), alleging that the East River Housing Corporation ("Respondent") refused to grant her reasonable accommodation request to keep a dog as an emotional support animal in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 et seq. ("Act").

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons following an investigation and determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g) (2). The Secretary has delegated to the General Counsel, who has retained and re-delegated to Regional Counsel, the authority to issue such a Charge following a determination of reasonable cause. 76 Fed. Reg. 42462, 42465 (July 18, 2011).

The Director of the Office of Fair Housing and Equal Opportunity ("FHEO") for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. § 3610(b).

HUD's efforts to conciliate this complaint were unsuccessful. See 42 U.S.C § 3610(b).

II. LEGAL AUTHORITY AND FACTUAL BASIS FOR THIS CHARGE

Based on HUD's investigation of the allegations contained in the above-mentioned verified complaint and the Determination of Reasonable Cause, Respondent is charged with violating 42 U.S.C §§ 3604(f)(1) and (f)(2) as defined by 42 U.S.C §§ 3604(f)(3)(B) as follows:

A. LEGAL AUTHORITY

- 1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
- 2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
- 3. For the purposes of 42 U.S.C. § 3604(f), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).

B. PARTIES AND SUBJECT PROPERTIES

- 4. Complainant is an "aggrieved person," as defined by 42 U.S.C. § 3602(i).
- 5. Complainant, who has chronic major depression, anxiety and Post-Traumatic Stress Disorder ("PTSD"), is an individual with a disability, as defined by the Act. 42 U.S.C. § 3602(h).
- 6. Respondent is a 1,672-unit housing cooperative located at 573 Grant Street, New York, New York 10002 (the "Subject Property").
- 7. At all times relevant to this Charge, Complainant was a proprietary lessee, occupying a unit in the Subject Property. Complainant's unit at the Subject Property is a "dwelling" within the meaning of 42 U.S.C. § 3602(b) and 24 C.F.R. § 100.20.

C. FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

8. Complainant is the proprietary lessee of an apartment at the Subject Property, subject to a proprietary lease dated November 24, 2003, by and between Respondent and Complainant.

¹ The Act uses the term "handicap" instead of "disability." However, both terms have the same legal meaning. This Determination will use the term "disability."

- 9. The Proprietary Lease and House Rules detail certain restrictions and obligations required of all lessees. Specifically, Article 3, paragraph 5(f) of the Proprietary Lease states that all House Rules are to be considered "substantial obligations" of tenancy. Article 14 of the Proprietary Lease and House Rule 27 specifically prohibit dogs and other animals in the buildings without Respondent's "prior written consent."
- 10. Complainant has a history of mental illness that dates back to her teenage years, including depression, anxiety and PTSD. Complainant's mental illness has impacted her ability to socialize, maintain relationships, sleep and concentrate. Complainant's mental illness also exacerbates her asthma.
- 11. In 2008, Complainant began seeing psychiatrist
- 12. In 2011, Complainant was without work and no longer had health insurance. For this reason, she discontinued medical treatment for her disability.
- 13. In August 2012, Complainant was once again working, but in a particularly stressful environment and her future with her employer was uncertain. Complainant began to experience a resurgence of her depression and anxiety symptoms. She was often physically ill, unable to socialize, and overwhelmed with her circumstances.
- 14. On August 22, 2012, while in a neighborhood park, Complainant met a woman who had found a dog tied to a park bench. The dog had no identifying tags and appeared to be suffering from heat exhaustion and dehydration. Complainant approached the dog and found her to be friendly. After the other woman attempted unsuccessfully to report the dog as abandoned to animal control, Complainant suggested that she would bring the dog home and call from there. As there were many other dog owners in her building, Complainant did not think this would be a problem.
- 15. Upon arriving home, Complainant bathed and fed the dog and began calling her "Rosie." Complainant called 311 and was told that animal control could pick up Rosie the next day, but they would take Rosie to a "kill shelter." Over the next few days, Complainant contacted a number of animal shelters to place Rosie without success. In another effort to find a safe home for Rosie, Complainant also posted a picture of Rosie on her Twitter page and asked whether anyone could adopt her. This effort also proved unsuccessful.
- 16. While in Complainant's care, Rosie showed herself to be a sweet, loving, and well-behaved animal. Rosie gave Complainant a reason to get out of bed in the morning. Complainant began walking Rosie and started socializing with other dog owners in the neighborhood. Complainant noticed an improvement in the symptoms of her life-long mental illness and, within a few days, decided to keep Rosie.
- 17. On September 14, 2012, Respondent sent Complainant a "10 Day Notice to Cure" alleging that Complainant had violated a "substantial obligation of [her] tenancy" by keeping Rosie in her apartment. The Notice to Cure required that Complainant remove Rosie from the apartment before October 2, 2012.

- 18. Shortly after receiving the Notice to Cure, the symptoms of Complainant's mental illness worsened and she again began treatment with Dr.
- 19. On September 20, 2012, Complainant responded to the Notice to Cure by submitting a request to Respondent for a reasonable accommodation to keep Rosie, which explained that Complainant has a "psychiatric disability that hinders [her] ability to function" (the "First Reasonable Accommodation Request").
- 20. The First Reasonable Accommodation Request was accompanied by a handwritten letter from Dr. dated September 19, 2012 (the "September 19 Dr. Letter"). In her letter, Dr. stated that she had been treating Complainant since September 2008. Dr. described Complainant's mental state as "serious." Dr. stated that Rosie is a "primary source of healing and emotional support" for Complainant and requested that "for the sake of [Complainant's] emotional health and well-being[,]" Respondent allow Rosie to remain with Complainant as a "service dog or emotional support animal." The September 19 Dr. Letter included the doctor's address and telephone number and invited Respondent to contact the doctor to discuss the situation further, if necessary.
- 21. Respondent failed to respond to Complainant's First Reasonable Accommodation Request and did not contact Dr. for any information.
- 22. On October 18, 2012, Respondent sent Complainant a "10 Day Notice of Termination." The Notice of Termination indicated that Complainant would have to vacate her apartment by November 6, 2012.
- 23. In response to the Notice of Termination, Complainant submitted another reasonable accommodation request on October 24, 2012 (the "Second Reasonable Accommodation Request"). Complainant's Second Reasonable Accommodation Request again attached the September 19 Dr. Letter.
- 24. By letter dated November 5, 2012, Respondent denied the Second Reasonable Accommodation Request because the September 19 letter did not use the word "disabled." Respondent neither contacted Dr. to discuss her letter nor indicated any inclination to further discuss Complainant's request for a reasonable accommodation.
- 25. On November 11, 2012, Complainant received a "Notice of Petition Holdover" notifying her that a Summary Holdover Proceeding regarding her eviction would be held in Manhattan Housing Court with a return date of November 29, 2012.
- 26. On November 15, 2012, Complainant's counsel, Karen Copeland, wrote a letter to Respondent's counsel which transmitted the September 19 Dr. Letter for a third time (the "Third Reasonable Accommodation Request.") The Third Reasonable Accommodation Request stated that Complainant is disabled and "is entitled to a reasonable accommodation to facilitate her dealing with the limitations of her disabling

conditions." Ms. Copeland requested "non-enforcement of ... [the] 'no pet' clause" as a reasonable accommodation. 27. In December 2012, Complainant began treatment with a clinical psychologist. 28. On January 13, 2013, Dr. wrote to Respondent regarding Complainant's "precarious emotional state." Dr. described Complainant's declining mental health, noting weight loss and a deterioration in Complainant's sleep, concentration and stated that Rosie "provides [Complainant] with a sense of closeness, attachment, and emotional stability... [and] enables [Complainant] to socialize." Dr. concluded that "[i]t would be in [Complainant's] best psychological interest to allow her to keep Rosie in order to feel secure, loved, and able to function at her highest level." 29. On January 18, 2013, Dr. wrote Respondent to follow-up regarding Complainant's reasonable accommodation requests. Dr. stated that the symptoms of Complainant's disability had been exacerbated by the possibility of losing stated that the prospect of losing Rosie "has been a significant Rosie. Dr. contributing factor to this current clinical depression." Dr. concluded that Rosie is "a tremendous support" for Complainant and that Rosie would aid in Complainant's recovery. 30. In March 2013, ignoring the pleas from Complainant's doctors, Respondent moved for summary judgment against Complainant in Housing Court and for the entry of a judgment of possession and issuance of a warrant of eviction. 31. On April 26, 2013, Complainant met with Dr. Thereafter, by letter dated April 29, 2013, Dr. noted Complainant's "precipitous emotional decline" due to the continued prospect of losing Rosie. Dr. concluded that Rosie is "profoundly connected with [Complainant's] emotional well-being."

- 32. On April 30, 2013, Housing Court Judge Sabrina Kraus granted summary judgment in favor of Respondent and awarded Respondent a final judgment of possession. Issuance of the warrant of eviction was initially stayed through May 31, 2013, to afford Complainant an opportunity to cure by permanently removing Rosie from her apartment. This stay was extended until September 30, 2013. In a Decision and Order of the Housing Court dated October 17, 2013, the stay was lifted and Complainant was given 10 days from the date of the order to cure the breach by permanently removing Rosie from her apartment.
- 33. Because Respondent unlawfully denied Complainant's request for a reasonable accommodation, Complainant has suffered great and irreparable loss and injury, including, but not limited to, severe anxiety, depression, emotional distress, out-of-pocket damages, and a deprivation of her right to use and enjoy her dwelling.

D. FAIR HOUSING ACT VIOLATIONS

34. As described in paragraphs 8 through 33 above, Respondent violated 42 U.S.C. §§ 3604(f)(1) and (f)(2) as defined by 42 U.S.C. § 3604(f)(3)(B) because it discriminated in the terms, conditions, or privileges of Complainant's tenancy and made her dwelling unavailable by refusing to allow Complainant to live with her support animal at the Subject Property when such an accommodation was necessary to afford Complainant an equal opportunity to use and enjoy her dwelling. 42 U.S.C. §§ 3604(f)(1), (f)(2) and (f)(3)(B); 24 C.F.R. §§ 100.202(a), (b) and 100.204(a).

III. CONCLUSION

WHEREFORE, the Secretary of HUD, through the office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(1), (f)(2) and (f)(3)(B), and prays that an order be issued that:

- 1. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
- 2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of disability in any aspect of the sale, rental, use, or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612(g)(3);
- 3. Mandates Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
- 4. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant for damages caused by Respondent's discriminatory conduct;
- 5. Awards a civil penalty of \$16,000 against Respondent for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
- 6. Award such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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